

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

A. JOSEPH MILLER,
Complainant

v.

WESTINGHOUSE ELECTRIC CORPORATION,
Respondent

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DOCKET NO. E-34201

JOINT STIPULATIONS OF FACT

FINDINGS OF FACT

CONCLUSIONS OF LAW

OPINION

RECOMMENDATION OF HEARING PANEL

FINAL ORDER

COMMONWEALTH OF PENNSYLVANIA
HUMAN RELATIONS COMMISSION

A. JOSEPH MILLER,
Complainant

vs.

WESTINGHOUSE ELECTRIC
CORPORATION
Respondent

}
Docket No. E34201
}
}

JOINT STIPULATION

AND NOW COME the parties by their counsel and file the following Stipulation as to facts, exhibits, and listings of witness:

FACTS

The parties stipulate to the following facts:

1. Complainant A. Joseph Miller was hired by Westinghouse Electric Corporation at its Beaver, Pennsylvania facility on January 9, 1967.
2. Westinghouse Electric Corporation (hereafter "Westinghouse") is a corporation with its principal place of business in Pittsburgh, Pennsylvania.
3. The Beaver facility manufactures molded case circuit breakers.
4. Complainant was hospitalized at Dixmont State Hospital, a state mental health hospital. He was admitted on October 2, 1968 and released on November 8, 1968.
5. While hospitalized at Dixmont, Complainant was diagnosed by Dr. Davis as having a paranoid personality disorder. (Miller dep. 151)
6. In or around December 14, 1979, Complainant was indefinitely suspended for an incident involving Joan Bollinger.
7. During the period of suspension, in or around January 8, 1980, Complainant went to Community Mental Health Center of Beaver County for an evaluation. He was evaluated by Doctor Jacqueline Baker, a Psychotherapist.

8. In 1982, Complainant was bumped into Group 87. Ann Nicoles was working in Group 87 in and around 1982 when Complainant started working there.

9. On April 15, 1983, Complainant received a 3-day disciplinary furlough for horseplay with fellow employee, Lester Perelli. At the time of the incident in which Complainant was disciplined for horseplay, he was informed that management would not tolerate any fighting in the facility. (Miller dep. 192)

10. On June 18, 1985, Complainant shoved Dennis Kemerer from the rear. As a result of the shoving incident, Complainant was indefinitely suspended subject to an investigation of the incident.

11. On June 21, 1985, Complainant was formally written up for an indefinite suspension to start on June 22, 1985.

12. On June 28, 1985, Complainant was given a letter ordering him to keep an appointment arranged by the Company with Dr. Weigel on July 3, 1985.

13. On July 9, 1985, Company received an evaluation letter from Dr. Weigel.

14. On July 24, 1985, Complainant was sent a letter of termination.

15. On July 25, 1985, Complainant was evaluated by a Dr. Donald R. Hands, Ph.D., Clinical Psychologist.

16. On August 7, 1985, Complainant went to Community Mental Health Center in Rochester, Pennsylvania for a psychiatric assessment by Jane K. Shinn, Therapist, Adult Division and Dr. Joseph H. Weigel, Psychiatrist.

17. On August 20, 1985, Complainant filed a charge of handicap discrimination with the Pennsylvania Human Relations Commission.

18. On October 30, 1985, William G. Bach, M.D., Chief of Medical Staff for

Community Mental Health, wrote a letter to Joseph Genevie, stating in his opinion the termination aggravated Complainant's symptoms.

19. On September 16, 1991, the PHRC notified the parties that the matter was scheduled for Public Hearing.

Respectfully Submitted,

LAW OFFICES OF HELEN R. KOTLER

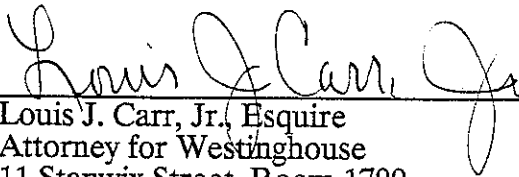


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1993

FINDINGS OF FACT *

1. The Complainant, A. Joseph Miller, was hired by Respondent (Westinghouse Electric Corporation) at its Beaver, Pennsylvania facility on January 9, 1967. (JS 1.)

2. Westinghouse Electric Corporation (hereinafter "Respondent") is a corporation with its principal place of business in Pittsburgh, Pennsylvania. (JS 2.)

3. The Complainant worked as an assemblyline man for fifteen years, until his original position was moved out of the plant. (NT 42.)

4. At that point, the Complainant was transferred into another group where he worked as a material handler and salvage operator until his discharge on June 18, 1985. (NT 42.)

5. In 1968, the Complainant was involved in an altercation with a co-worker which resulted in the Complainant's hospitalization at Dixmont State Hospital, a state mental health facility, from October 2, 1968 until November 8, 1968. (NT 44; JS 4.)

6. While at Dixmont, the Complainant was diagnosed as having a paranoid personality disorder. (JS 5.)

* The foregoing "Joint Stipulations" are incorporated herein as if fully set forth. To the extent that the Opinion which follows recites facts in addition to those here listed, such facts shall be considered to be additional Findings of Fact. The following abbreviations will be utilized throughout these Findings of Fact for reference purposes:

NT Notes of Testimony
JS Joint Stipulations of Fact
CE Complainant's Exhibit

7. The Complainant, during his employment at Respondent's workplace, had a history of "bothering females" and "having delusions that they in turn care for him." (NT 235.)

8. The Complainant "liked" one of his co-workers, Ann Nicoles. (NT 80.)

9. The Complainant was increasingly frustrated because Ms. Nicoles was friendly with other co-workers, specifically Dennis Kemerer. (NT 80-81.)

10. On June 17, 1985, the Complainant became so upset that he told Nancy Perilli, another co-worker, that he was going to kill Kemerer. (NT 169.)

11. On June 18, 1985, the Complainant walked up and shoved Dennis Kemerer from the rear. (JS 10; NT 260.)

12. As a result of this incident, the Complainant was indefinitely suspended, subject to an investigation of the incident. (JS 10.)

13. The Complainant was then ordered to meet with Dr. Joseph Weigle for psychiatric evaluation. (NT 89; JS 12.)

14. Dr. Weigle diagnosed the Complainant as suffering from a paranoid personality disorder. (NT 90; CE 30.)

15. On July 24, 1985, the Complainant was notified that he was terminated. (JS 14.)

16. When Complainant was placed under investigation, it was conducted by James O'Roark, Manager of Employee Relations. (NT 395-403.)

17. The conclusion of the investigation was that Complainant had violated the Plant Rules of Conduct, "(a)(8) fighting, assault or other disorderly conduct." (CE 16.)

18. After O'Roark received information from Dr. Weigle informing him that Complainant was responsible for his actions, the suspension was converted to a discharge. (NT 404-405.)

19. Dr. Melvin Melnick, a board certified psychiatrist, testified at public hearing that Complainant suffers from chronic paranoid personality disorder. (NT 290, 295.)

20. Dr. Melnick also stated that Complainant's disorder causes him to be easily hurt, thin-skinned, and to misinterpret ambiguous situations. (NT 301.)

CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission (hereinafter "PHRC") has jurisdiction over the parties and the subject matter of this case.

2. All procedural prerequisites for a public hearing in this matter have been met.

3. The Complainant is an "individual" as defined by the Pennsylvania Human Relations Act (hereinafter "PHRA").

4. The Respondent is an "employer" as defined by the PHRA.

5. The Complainant has established a prima facie case by showing that:

- (a) he is a member of a protected class;
- (b) he was qualified to perform his job duties;
- (c) he was terminated by the Respondent; and
- (d) others not in the Complainant's protected class were not treated the same under similar circumstances.

6. When the Respondent raises the defense of job-relatedness, the Respondent bears the burden of proving the Complainant's disability is job-related.

7. The Respondent has shown that the Complainant's disability is job-related because it both substantially interferes with his ability to

perform the essential function of his employment, and poses a demonstrable threat of serious harm to the health and safety of the Complainant and others.

8. The Respondent has shown that it could not modify the job to accommodate the Complainant.

9. The Respondent has met its burden of showing that the Complainant's disability is job-related and that no reasonable modification could be made to eliminate the threat of harm to the health and safety of others.

O P I N I O N

This matter arises out of a complaint filed by A. Joseph Miller (hereinafter "Complainant") against the Westinghouse Electric Corporation (hereinafter "Respondent"), Docket No. E-34201, with the Pennsylvania Human Relations Commission (hereinafter "the Commission" or "PHRC").

On August 20, 1985, the Complainant filed a complaint alleging that the Respondent terminated him from his employment as a material handler and salvage operator because of his handicap/disability, paranoid personality disorder, and that the Respondent violated its duty to reasonably accommodate the Complainant pursuant to Sections 5(A)(b)(1) and (b)(5) of the Pennsylvania Human Relations Act, Act of October 27, 1955, P.L. 744, as amended, 43 P.S. Section 951, et seq. (hereinafter "PHRA").

PHRC staff conducted an investigation into the allegations raised by the complaint. On October 5, 1987, PHRC staff determined that there was no probable cause to credit the allegations raised by the Complainant. Subsequent to that finding, the Complainant requested reconsideration of the finding of no probable cause. On September 9, 1988, the Respondent was informed of PHRC's decision to reopen the matter in order to conduct a preliminary hearing. A preliminary hearing was conducted on January 26, 1989, before Presiding Officer Michael M. Smith. On October 9, 1990, the Presiding Officer found probable cause to credit the allegations raised in the complaint. Thereafter, PHRC staff notified the parties that the matter had been approved for the convening of a public hearing.

The public hearing in this matter was held over a number of days: June 21 and June 22, 1993, and August 19, 1993. The parties agreed that this matter would be heard by two Commissioners. Commissioners Carl E. Denson and Wilbert D. Chrisner, III, presided over the public hearing. Phillip A. Ayers, Esquire, served as panel advisor to the panel of commissioners. The Complainant was represented by Helen R. Kotler, Esquire, and the Respondent was represented by Louis J. Carr, Jr., Esquire. The Commission's interest on behalf of the complaint was represented by Vincent A. Ciccone, then-Assistant Chief Counsel for the Commission. Counsel for the Respondent filed a post-hearing brief, and Commission counsel as well as Complainant's counsel filed a post hearing brief.

Generally, in a case of this nature, the allocation of proof is fairly straightforward. The Complainant must establish a prima facie case of handicap discrimination. Once the Complainant has made his prima facie showing, normally the burden shifts to the Respondent to simply articulate a legitimate, nondiscriminatory reason for its action. Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248 (1981). However, in the instant case, the Respondent has asserted the defense of job-relatedness and undue hardship. When the Respondent asserts job-relatedness and undue hardship, it is the Respondent's burden to establish such defenses. National Railroad Passenger Corp. (Amtrak) v. Pennsylvania Human Relations Commission, 70 Pa. Cmwlth. 62, 452 A.2d 301, 304 (1982). Therefore, we shall proceed with the prima facie showing.

In the instant case, the Complainant can establish a prima facie case by establishing that:

- (1) he is a member of a protected class;
- (2) he was qualified to perform his job;
- (3) he was terminated by the Respondent; and
- (4) others not in the Complainant's protected class were not treated the same under similar circumstances.

Firstly, the Complainant is a handicapped individual within the meaning of the Commission's regulations at 16 Pa. Code §44.4. A "handicapped or disabled person" is defined as:

(i) A person who:

(A) has a physical or mental impairment which substantially limits one or more major life activities;

(B) has a record of such an impairment; or

(C) is regarded as having such an impairment.

(ii) As used in subparagraph (i) of this paragraph, the phrase:

(A) "physical or mental impairment" means a physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin and endocrine; or a mental or psychological disorder such as mental illness, and specific learning disabilities.

(B) "major life activities" means functions such as caring for one's self; performing manual tasks, walking, seeing, hearing, speaking, breathing; learning and working.

(C) "has a record of such an impairment" means has a history of or has been misclassified as having a mental or physical impairment that substantially limits one or more major life activities.

(D) "is regarded as having an impairment" means having a mental or physical impairment that does not substantially limit major life activities but that is treated by an employer or owner, operator or provider of a public accommodation as constituting such a limitation; has a physical or mental impairment that substantially limits major life activities only

as a result of the attitudes of others toward such impairment; or has none of the impairments defined in subparagraph (i)(A) of this paragraph but is treated by an employer or owner, operator or provider of a public accommodation as having such an impairment.

16 Pa. Code §44.4

In the instant case there is no dispute that the Complainant has a mental impairment which substantially limits one of the major life activities, working. Clearly the Complainant is a handicapped individual within the meaning of 16 Pa. Code §44.4.

The second element of the prima facie case is whether the Complainant was qualified to perform his job duties. The record is clear in showing that the Complainant was qualified to perform his duties as a material handler and salvage operator.

The Complainant has obviously met the third element of the prima facie case. The Complainant was certainly terminated from his position. Lastly, a review of the record at public hearing (and in the post-hearing brief) does not indicate any evidence that others not in Complainant's class were treated differently under similar circumstances.

Accordingly, the Complainant did not establish a prima facie case in this matter. However, assuming arguendo and since the Respondent has asserted job-relatedness, we will analyze the Respondent's defense.

The Respondent has asserted that the Complainant was terminated because his handicap/disability was job-related, and no reasonable modifications could be made to eliminate the threat of harm to Complainant and to the health and safety of others. In the case of National Railroad Passenger Corp. v. PHRC; supra, Commonwealth Court held that a Respondent who

defends a charge of handicap discrimination by asserting that the handicap/disability is job-related bears the burden of proof as to that assertion.

Commission regulations at 16 Pa. Code §44.4 define "non job-related handicap or disability" as follows:

(i) Any handicap or disability which does not substantially interfere with the ability to perform the essential functions of the employment which the handicapped person applies for, is engaged in, or has been engaged in.

(ii) A handicap or disability is not job-related merely because the job may pose a threat of harm to the employe or applicant with the handicap or disability unless the threat is one of demonstrable and serious harm.

(iii) A handicap or disability may be job-related if placing the handicapped or disabled employee or applicant in the job would pose a demonstrable threat of harm to the health and safety of others.

In the instant case, it is clear that the Complainant's disability does substantially interfere with the Complainant's ability to perform the essential functions of his job. The Complainant himself has admitted very real difficulties with his interaction with other people at work. The Complainant has also had delusions about other employees being hostile to him, plotting against him and "ruining his chance for a relationship" with female coworkers. The evidence presented at the public hearing clearly demonstrates that the Complainant is unable to get along with other employees, an essential function of the job and, therefore, job-related.

The next point to be considered is whether the Complainant posed a threat of demonstrable and serious harm to himself and others. The Complainant's disability has resulted in his believing that others were involved in a conspiracy against him. The Complainant then reacts to that perception by threatening individuals. The Complainant, on at least two

occasions, threatened to kill two of his co-workers. The Complainant's own witness, Dr. Melnick, indicated that the Complainant, even after being warned that if he touched someone he would be discharged, was unable to control himself. The reason given for the Complainant's discharge was that he violated the "Plant Rules of Conduct" by attacking a co-worker on the job. The Complainant's record is replete with other incidents, including a threat to kill a person in 1968 and a suspension for stalking a female employee at the plant. The Complainant further testified about incidents from 1968 to 1985 where he believed that other employees were preventing him from becoming involved with female employees. The Complainant attempted to date several women from the workplace and was very angry when his attempts were rebuffed. His reactions ranged from anger and perceptions of a conspiracy, to following a female employee home so he could explain to her that he was not following her. Accordingly, the record in this matter reflects that the Complainant because of his disability poses a demonstrable threat of harm to the health and safety of others.

Lastly, we must consider whether any reasonable accommodation could be made to the job to eliminate the threat of harm to the Complainant or others. More precisely, would any modifications of the work functions eliminate the threat of harm? The Respondent cites the case of Guice-Mills v. Derwinski, 967 F.2d 794 (2nd Cir. 1992), which provides some insight into the issue of reasonable accommodation. The court held:

Employers are under a duty to make reasonable accommodation to the known mental limitations of a qualified employee or to demonstrate that the accommodation would impose an undue hardship in its operations.

Interestingly, in the instant case, the Complainant is not requesting a modification of his job, but rather attempting to modify the behavior of other employees. The Complainant's problem is his inability to properly evaluate any attention by a female employee. In response to a question on this particular point, the Complainant's own witness, Dr. Melnick, testified.

Q. If Mr. Miller has a perception that a woman is his girl-friend and he likes her or he wants to make her some relationship (sic), how does the company accommodate that? What do you suggest?

A. Well, I don't know how the company could accommodate that. I could tell you that just what he thinks or what he wants would be very hard to accommodate. To what he might communicate I think could be accommodated. Although I would say that a woman who knew him, and many times this is the kind of intuitive thing, that the woman might be likely to think I am not--if I am friendly to this guy, he will feel encouraged. I will be real bland in my dealing with him. That the company--woman who would work around him would be wise to keep in mind that if they felt friendly and were open and spontaneous with him, he might over-interpret their interest in a friendship with him, and they would be wise to be bland and neutral with him so as not to encourage him because he might read into it more than what's there.

Dr. Melnick also testified as to the extreme difficulty in determining how the Respondent is to communicate to its female employees not to be too friendly to the Complainant. The doctor further indicated that all employees who came in contact with Complainant should be sensitized to Complainant's disability. (NT 377.) Clearly this would pose an undue hardship on the Respondent. Also, this proposed accommodation goes beyond the duty to accommodate since accommodations must be necessary to assist an employee in the performance of job duties. Furthermore, Dr. Melnick testified that the Complainant did not have the ability to control himself

or his perceptions. To place that responsibility on all of Respondent's employees is not only an undue hardship but virtually an impossibility.

After review of the record in this matter, having found that the Complainant's disability is job-related because it would pose a demonstrable threat of harm to the health and safety of himself and others, finding that no reasonable accommodation can be made for Complainant, the Respondent has sustained its burden of proving job-relatedness and, therefore, this matter must be dismissed.

An appropriate Order follows:

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

A. JOSEPH MILLER,
Complainant

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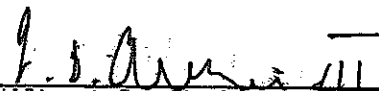
RECOMMENDATION OF THE HEARING COMMISSIONERS

Upon consideration of the entire record in the above-captioned case, it is the Hearing Commissioners' recommendation that the Complainant has failed to prove discrimination in violation of the Pennsylvania Human Relations Act. It is, therefore, the Hearing Commissioners' recommendation that the attached Stipulations of Fact, Findings of Fact, Conclusions of Law, Opinion and Order be approved and adopted by the full Pennsylvania Human Relations Commission. If so approved and adopted, the Hearing Commissioners recommend issuance of the attached Final Order.

By:


Carl E. Denson
Hearing Commissioner

By:


Wilbert D. Chrisner, III
Hearing Commissioner

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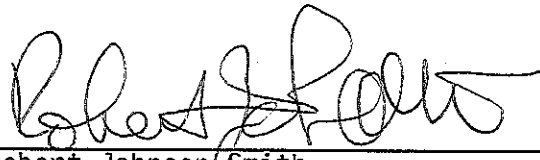
FINAL ORDER

AND NOW, this 23rd day of November, 1994, after a review of the entire record in this case, the Pennsylvania Human Relations Commission, pursuant to Section 9 of the Pennsylvania Human Relations Act, hereby approves and adopts the foregoing Stipulations of Fact, Findings of Fact, Conclusions of Law, Opinion, and Final Order recommended by the Hearing Commissioners, and hereby

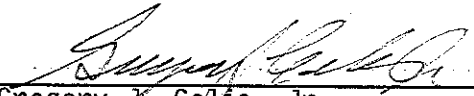
O R D E R S

that the instant complaint docketed at E-34201 be dismissed.

By:


Robert Johnson Smith
Chairperson

ATTEST:


Gregory J. Celia, Jr.
Secretary